

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

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6 LEHMAN BROTHERS HOLDINGS

7 INC., Case No. 08-13555-scc

8

9 Debtor.

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11

12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, New York

15

16 March 4, 2016

17 2:58 PM

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19 B E F O R E:

20 HON. SHELLEY C. CHAPMAN

21 U.S. BANKRUPTCY JUDGE

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1 HEARING Re: Doc #52107 Motion for Sanctions Against William
2 Kuntz III

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 QUINN EMANUEL URQUHART & SULLIVAN, LLP

3 Attorneys for the Creditors' Committee

4 51 Madison Avenue

5 22nd Floor

6 New York, NY 10010

7

8 BY: ANDREW J. ROSSMAN, ESQ.

9 TYLER G. WHITMER, ESQ.

10 JAMES C. TECCE, ESQ.

11 WILLIAM PUGH, ESQ.

12

13 WACHTELL, LIPTON, ROSEN & KATZ

14 51 West 52nd Street

15 New York, NY 10019-6159

16

17 BY: MOLLY GROVAK ABRAHAM, ESQ.

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19 ALSO PRESENT:

20 WILLIAM KUNTZ III

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P R O C E E D I N G S

THE COURT: Hello. Good afternoon. Please have a seat. How's everyone today? Good afternoon.

MR. KUNTZ: Good afternoon, Your Honor.

THE COURT: Want to have a seat?

MR. KUNTZ: Not yet. I'd like to say something if I may.

THE COURT: No, not until I say so.

MR. KUNTZ: Already.

THE COURT: Thank you very much.

Mr. Rossman, apparently there was recently filed on the docket a couple of other papers by Mr. Kuntz pertaining to this matter. I'm not sure if you have them. One was time stamped at 1:21 today, and now appears at docket 522256. I can hand you a copy.

MR. ROSSMAN: Thank you, Your Honor. We have not received it.

THE COURT: Mr. Kuntz, I assume that you have a copy of this. It's the one that begins:

"Your Honor, with respect to my suggestion of recusal, it is with mild regret that I see Your Honor made an order with respect to that. I would have preferred to see you take it under advisement, but that was I am sure your decision, while it may turn out to be the worst in your legal career. Time will tell."

1 And so forth. Here's a copy.

2 MR. ROSSMAN: Thank you, Your Honor.

3 THE COURT: In addition, and I haven't searched
4 the entire docket, but there does also appear to be one that
5 was filed on -- it was received in the clerk's office on
6 February 29th, and it appears at docket 52242. It's
7 addressed to me, but it also appears to partially be
8 addressed to Judge Sullivan. I'm not quite sure.

9 And the filing that I just handed you, the one at
10 docket ending 56, also appears to include some papers
11 addressed to Judge Sullivan. That looks like it was filed
12 at the District Court on March 1st at 10:05.

13 In any event, Mr. Kuntz, is there anything else
14 that you filed or you'd like to bring to my attention?

15 MR. KUNTZ: Well, thank you, Your Honor.

16 With cooperation of counsel they delivered to me
17 this large folder this morning, and I was also served with
18 the papers by the process server. So I can acknowledge the
19 service it was made, but it wasn't made last month.

20 THE COURT: Okay.

21 MR. KUNTZ: I apologize in part for Tuesday's
22 discomfort, if you will, but there's an important process
23 here. They rely upon email, I do not. I rely upon the U.S.
24 mail, they give that afterthought, and I referred to
25 (indiscernible) in Exhibit 42 I believe, may be another

1 exhibit, where they mailed me a document on the 18th or 19th
2 of last month. When I checked my mail five, six days later
3 it wasn't there. They apparently don't use what's called
4 accountable mail, express so you can track.

5 And further with respect to the papers Your Honor
6 just mentioned, I have actual time stamped copies, originals
7 for counsel. I wasn't -- it didn't seem to me appropriate
8 to put them in the mail so they'd be across the street when
9 I could simply provide them for them now. If Your Honor
10 would permit.

11 THE COURT: Sure. But you --

12 MR. KUNTZ: Or if they would accept.

13 THE COURT: Sure. But there are rules, and these
14 filings aren't pursuant to any rules that I'm aware of, and
15 it's just happenstance that I happen to become aware of a
16 pleading that was filed at 1:21 today prior to a scheduled
17 3 o'clock hearing. It's neither here nor there, you can
18 give Mr. Rossman whatever pleadings you'd like and we're
19 going to get started.

20 MR. KUNTZ: Such is the same (indiscernible)
21 apparently those are filed out of time on their notice, but
22 such is -- well, Your Honor will hear that.

23 MR. ROSSMAN: Is that a copy for me?

24 MR. KUNTZ: Is somebody from the U.S. Trustee's
25 Office here? One for each. Well, I've given then one copy.

1 THE COURT: That's fine.

2 MR. ROSSMAN: We're fine.

3 THE COURT: Thank you.

4 Okay. Mr. Rossman, on for hearing today is a
5 motion for sanctions against Mr. Kuntz, so I'm ready to hear
6 you.

7 MR. ROSSMAN: Thank you, Your Honor. If I may I'm
8 going to come up to the podium.

9 THE COURT: Sure.

10 MR. ROSSMAN: But I want to begin, if Your Honor
11 will allow me, by making very clear the relief that we're
12 seeking and to make it also clear to Mr. Kuntz and to offer
13 to Mr. Kuntz a way out of this problem if he's willing to
14 entertain it.

15 I have in my hand a one-page stipulation of
16 dismissal with prejudice of his appeal of the order
17 approving the settlement. And the very simple request that
18 we have is that he withdrew his appeal. So I just want to
19 make clear --

20 THE COURT: Sure.

21 MR. ROSSMAN: -- on the record that we're asking
22 him if he would withdraw that appeal and providing him with
23 a copy of the stipulation, he can sign it or not, that's
24 purely his choice.

25 If he does I will represent to the Court and I'll

1 represent to Mr. Kuntz that we will take down all of our
2 motions and we will not proceed with any sanctions with him
3 based on past conduct if he's willing to do that. And if
4 he's not then I'll proceed with the rest of my motion. But
5 I'd like to tender it --

6 THE COURT: Okay.

7 MR. ROSSMAN: -- if I may, on the record.

8 THE COURT: I think that's a good idea.

9 Mr. Kuntz, do you understand --

10 MR. KUNTZ: Would Your Honor like to have this
11 marked?

12 MR. ROSSMAN: We can do that.

13 THE COURT: We'll mark it as Sanction's Exhibit 1.

14 MR. ROSSMAN: Sorry, Your Honor. I seemed to have
15 taken all the copies with me.

16 THE COURT: So, Mr. Kuntz, do you have an answer
17 for Mr. Rossman?

18 MR. KUNTZ: Last Tuesday at the omnibus hearing
19 before it was interrupted by the fire alarm, Lehman omnibus
20 hearing Tuesday morning, I was prepared to offer a
21 stipulation which in effect would allow the funds to be
22 deposited in the court's registry account with some small
23 conditions.

24 My position is, is that there is a very curious
25 circumstance (indiscernible) with the state comptroller's

1 office that gives me a sufficient standing to make the
2 suggestion I made.

3 THE COURT: Mr. Kuntz, let me stop you.

4 MR. KUNTZ: Thank you, Your Honor.

5 THE COURT: Okay. You do not have standing in
6 this proceeding. The -- whatever unclaimed funds there are
7 in the state comptroller's office have nothing to do with
8 this proceeding at this point.

9 There was a bar date in this case and there was a
10 confirmed plan of reorganization which rendered any equity
11 interests in the Lehman Brothers' debtors worthless.

12 So whatever unclaimed funds there are at the state
13 comptroller's office are irrelevant.

14 Moreover, as you are sitting here today you do not
15 possess an interest, an economic interest in the Lehman
16 Brothers case, and therefore you have no standing. You have
17 no standing.

18 So what Mr. Rossman is offering you --

19 MR. KUNTZ: I understand, Your Honor. May I be
20 heard?

21 THE COURT: When I'm finished.

22 MR. KUNTZ: Thank you, Your Honor.

23 THE COURT: What Mr. Rossman is offering you is a
24 chance to discontinue your objection to the settlement.
25 He's not offering to negotiate with you nor is J.P. Morgan

1 offering to negotiate with you. It's a settlement that I've
2 approved, and the funds cannot be released until there's a
3 final order.

4 And you understand I think very well that the
5 filing of your objection and the appeal have confounded the
6 settlement. Your word, not mine.

7 So therefore. Mr. Rossman. consistent with frankly
8 good practice and in the interest of fairness, is giving you
9 another opportunity to withdraw your objection, withdraw
10 your appeal as it has no merit, for among other reasons, you
11 have no standing in this proceeding. So he's offering that
12 to you.

13 If that's accepted, as he said, I will agree that
14 this all will go away, even though frankly I would still
15 have the power to impose sanctions. And if it were to go
16 away that means that there would be no need for further
17 proceedings before Judge Sullivan.

18 If you do not wish to withdraw your filings we're
19 going proceed with the sanctions hearing, and counsel has
20 indicated that the estate also wishes and intends to pursue
21 sanctions with Judge Sullivan over which I of course have
22 nothing to say, that's solely within his purview.

23 So now I'd like to know if you have an answer to
24 the question of are you willing to enter into this
25 stipulation?

1 MR. KUNTZ: No.

2 THE COURT: Okay. Mr. Rossman, you want to --

3 MR. KUNTZ: May I be heard for a moment, Your
4 Honor?

5 THE COURT: Sure, go ahead.

6 MR. KUNTZ: Here's the problem that I see.
7 There's something on deposit in Albany. Those documents
8 have been in -- docketed in this case from almost the
9 inception of the case. Counsels' billing statements
10 indicates they reviewed the docket every single day back in
11 2008, 2009. These documents that relate to the state
12 comptroller's office have been here almost a decade.

13 Now, I am not -- I always thought up until
14 recently that it was money, and I agree with Your Honor if
15 was money, there's nothing there. But if it's not money, if
16 it's securities in Lehman Brothers, what I suggested to the
17 Court was not an objection and not a support, I simply said
18 that a successor examiner should be appointed to make this
19 squeaky clean. And in response to that I got a certificate
20 of no objection under oath that I emailed to court and
21 that's when we went right off the rails.

22 And as far as I'm concerned until -- and as I
23 understand it that's a very serious situation, because as a
24 result of that affirmation under penalty of perjury that I
25 had emailed the Court, I basically felt if there's nothing

1 going to happen in court why am I going to get on a bus at
2 midnight and ride all the way down here just to have, you
3 know, orders signed and go away. And that's why we're here
4 today, is because somebody has -- one of those firms saw
5 something and they assumed by not paying careful attention
6 that I had emailed the Court, and I did not email the Court.
7 I would never email the Court. It's not -- you know, I rely
8 upon the U.S. mail and I file my papers with the clerk.
9 Maybe traditionally --

10 THE COURT: Mr. Kuntz, let me stop you, please.
11 You filed a piece of paper in connection with the approval
12 of the settlement with J.P. Morgan.

13 MR. KUNTZ: I filed a suggestion that a successor
14 examiner be appointed.

15 THE COURT: That's right, and that suggestion has
16 nothing to do with an objection on the merits to the
17 settlement. A settlement is approved under Rule 9019 of the
18 thorough Rules of Bankruptcy Procedure and it requires a
19 determination that the settlement is in the best interest of
20 the estate under a standard that examines whether or not the
21 settlement is -- falls higher than the lower range -- the
22 bottom of the lower range of reasonableness. The settlement
23 met those standards very easily, no one else indeed
24 objected.

25 Your document talking about a successor trustee

1 was not on point -- successor examiner --

2 MR. KUNTZ: Thank you, Your Honor.

3 THE COURT: -- was not on point, had nothing to do
4 with the merits of the settlement. I actually eluded -- we
5 spoke about it during the course of the hearing, if I'm
6 recalling it correctly. The phone line was connected, I
7 asked if anyone was on the phone, if anyone else wished to
8 be heard, there was no response, I entered the order
9 approving the settlement.

10 So that piece of paper that you filed is not
11 inconsistent with the fact that the debtors filed a
12 certificate of no objection or anything else.

13 So we're going to go back to the point which is
14 that Mr. Rossman has offered you an opportunity to withdraw
15 your objection to the settlement and discontinue the appeal
16 and you've declined.

17 MR. KUNTZ: Thank you, Your Honor.

18 THE COURT: Okay. Mr. Rossman?

19 MR. ROSSMAN: Thank you, Your Honor.

20 Your Honor, I want to first bring to the Court's
21 attention that we filed an amended proposed order.

22 THE COURT: Okay. I haven't had a chance to -- I
23 haven't seen that.

24 MR. ROSSMAN: And I have a copy handy and I'd like
25 to hand the Court one.

1 THE COURT: Okay.

2 MR. ROSSMAN: I'd like to hand Mr. Kuntz a copy.

3 THE COURT: Okay.

4 MR. ROSSMAN: And then I'd like to walk Your Honor
5 through that --

6 THE COURT: Sure.

7 MR. ROSSMAN: -- and then the record of the
8 proceeding.

9 THE COURT: Okay. Thank you. Thanks. Okay, go
10 ahead.

11 MR. ROSSMAN: So the -- what you have in front of
12 Your Honor is an order granting motion for sanctions against
13 William Kuntz III, it is a proposed order of course, subject
14 to the Court's review.

15 The order recites the background in the beginning,
16 and then I want to just take a moment to walk the Court
17 through the findings, which there are just four, and the
18 decretal paragraphs of which --

19 THE COURT: Okay.

20 MR. ROSSMAN: -- there are five. Okay?

21 The order recites that the Court finds that Mr. --

22 THE COURT: Mr. Kuntz, you might want to read
23 this. You might want to be following along.

24 MR. KUNTZ: Your Honor might care to examine the
25 documents from the state comptroller's office before you

1 jump to a conclusion --

2 THE COURT: Have a seat, Mr. Kuntz.

3 MR. KUNTZ: -- that you've not.

4 THE COURT: Have a seat.

5 MR. ROSSMAN: And just --

6 MR. KUNTZ: Thank you, Your Honor.

7 MR. ROSSMAN: -- just so Your Honor understands
8 how I would propose to proceed, with Your Honor's
9 permission, I wanted to just identify and walk through the
10 order and then I have a presentation in terms of the --

11 THE COURT: Okay.

12 MR. ROSSMAN: -- evidence and the record.

13 So I'm not asking the Court to rule on --

14 THE COURT: Sure.

15 MR. ROSSMAN: -- the order at this point, I just
16 wanted to make sure the Court --

17 THE COURT: Okay.

18 MR. ROSSMAN: -- has that in front of it.

19 THE COURT: All right.

20 MR. ROSSMAN: So the order that we would propose
21 add the end of the hearing is that the Court find that
22 Mr. Kuntz lacks standing to participate in the Chapter 11
23 cases of Lehman Brothers, that's what we define as the
24 bankruptcy cases which deal with -- are the Lehman umbrella
25 Chapter 11 cases. Lacks standing to object to the

1 settlement motion, which refers to the 9019 motion approving
2 the settlement with J.P. Morgan, which Your Honor entered on
3 February 8th. And to seek the relief that's sought by his
4 submissions. That he lacks standing to seek the relief that
5 he does seek.

6 We ask further that the Court find that
7 Mr. Kuntz's submissions, which are defined as all the
8 submissions that he's made in the case, and there are
9 specifically attached as part of the binder submission that
10 we've made, Your Honor, that they are frivolous, that
11 they're not warranted by existing law, and they're based on
12 factual contentions that have no evidentiary.

13 That the Kuntz submissions have been filed for
14 improper purposes, including to harass, cause unnecessary
15 delay, and needlessly increase cost.

16 And fourth, that Mr. Kuntz has exhibited a
17 continued pattern of vexatious and frivolous conduct in the
18 bankruptcy cases.

19 Those are the fact findings we ask the Court --

20 THE COURT: Okay.

21 MR. ROSSMAN: -- to make.

22 THE COURT: Just in the spirit of being able to
23 follow along the defined term Kuntz submissions tracks back
24 to the motion?

25 MR. ROSSMAN: It does, Your Honor.

1 THE COURT: Okay. Go ahead.

2 MR. ROSSMAN: And on page 2 of the order we
3 propose in the court order that the motion is granted.

4 In paragraph 2 that the Court reserve decision on
5 whether Mr. Kuntz should be required to reimburse Lehman
6 Brothers for any and all fees and expenses incurred in
7 responding to the submissions. So we're not asking for an
8 award of monetary sanctions today.

9 THE COURT: Okay.

10 MR. ROSSMAN: But the Court to reserve on that.

11 In paragraph 3 that with the exception of
12 Mr. Kuntz taking an appeal of this order itself that
13 Mr. Kuntz be enjoined from filing any complaint, motion,
14 objection, pleading, or notice of appeal in the bankruptcy
15 cases or any related adversary proceedings without first
16 having applied to the Court to obtain and without having
17 obtained express permission to file any such complaint,
18 motion, objection, pleading, or notice of appeal.

19 So that Your Honor understands, we think this very
20 closely tracks the case law on this, but what we are asking
21 for is a limited filing injunction that would prohibit
22 Mr. Kuntz from making any filing in the Lehman Brothers with
23 two exceptions. One would be where he gets permission of
24 the Court to make a filing, and the other would be an appeal
25 of this very order.

1 Paragraph 4, consistent with that, states that
2 except with respect to an appeal of this order unless the
3 filing has been authorized by an order of the Court no
4 complaint, motion, objection, pleading, or notice of appeal
5 filed by Mr. Kuntz in the bankruptcy cases or any related
6 adversary proceeding shall have any force and effect.

7 And further consistent with that paragraph 5
8 provides that except with respect to an appeal of this order
9 the clerk of the court is hereby directed to take no action
10 with respect to any complaint, motion, objection, pleading,
11 or notice of appeal filed by Mr. Kuntz in the bankruptcy
12 cases or any related adversary proceedings unless authorized
13 to do so by an order of the Court.

14 So that is the relief that we're seeking in this
15 proceeding, Your Honor.

16 And if I may, we have a binder of materials that
17 we previously served, and to be fair, served just before
18 this hearing, so about 20 minutes before the hearing we
19 provided it to Mr. Kuntz, but it is a collection of what we
20 believe to be the full record of this case, which includes
21 all relevant filings that have been made as well as
22 correspondence that we've had with Mr. Kuntz, including his
23 to us and ours to him.

24 THE COURT: Stopping short of the one that was
25 filed late this afternoon undoubtedly.

1 MR. ROSSMAN: I believe we caught one of the two
2 that you mentioned.

3 THE COURT: Okay.

4 MR. ROSSMAN: Okay?

5 THE COURT: Yeah.

6 MR. ROSSMAN: And if I can have -- I have one for
7 Your Honor and --

8 THE COURT: Okay. Thank you very much.

9 MR. ROSSMAN: Let me describe what's in the
10 binder, and we have filed this on the record, Your Honor --
11 I'm sorry -- we filed this on the docket.

12 THE COURT: Okay.

13 MR. ROSSMAN: The first is a very unexciting
14 declaration from me that introduces what's behind it.

15 And then behind that we have at tab --

16 THE COURT: Mr. Kuntz -- excuse me, Mr. Rossman.
17 Can I ask you what you're doing, sir?

18 MR. KUNTZ: I'm just looking for documents, Your
19 Honor. I understand where counsel is going on this.

20 THE COURT: Okay.

21 MR. KUNTZ: And quite frankly until Your Honor --

22 THE COURT: No, no, no. You appear to be --

23 MR. KUNTZ: May I finish, Your Honor?

24 THE COURT: No, I'm talking now.

25 MR. KUNTZ: All right.

1 THE COURT: You appear to be going through your
2 mail, and I expect persons who appear before me to show the
3 Court respect like the gentlemen who are sitting on the
4 other side of the room.

5 So if you are not working on your case I would
6 suggest that you stop what you're doing.

7 MR. KUNTZ: If Your Honor please, on top of the
8 piles of mail is a letter from the gentlemen sitting over
9 there. I am not looking through my -- I'm looking for
10 documents to appropriately respond. And again, I can only
11 encourage Your Honor to look at facts and evidence that you
12 have not examined, you have jumped to a conclusion that I
13 have no standing.

14 Now, I accept the fact that whatever is in the
15 state comptroller's office --

16 THE COURT: Mr. Kuntz --

17 MR. KUNTZ: -- may be --

18 THE COURT: -- have a seat, please.

19 MR. KUNTZ: May I finish, Your Honor?

20 THE COURT: I don't want to hear about the state
21 comptroller's office. Mr. Rossman --

22 MR. KUNTZ: Well if they give me standing and Your
23 Honor is wrong then you will be unhappy with me again.

24 THE COURT: Mr. Kuntz, have a seat. Thank you.

25 Go ahead, Mr. Rossman.

1 MR. ROSSMAN: Thank you, Your Honor.

2 So tab A is the exhibit lists that identifies all
3 the materials that we have filed on the docket and that
4 we've put in this binder, and there are three declarations
5 behind the exhibit lists. One for Mr. Whitmer, one for
6 Mr. Odell, one for Mr. Pugh, each affirming the authenticity
7 of the documents. We're sorry it had to be three lawyers,
8 but different lawyers received different pieces of
9 correspondence.

10 THE COURT: Okay.

11 MR. ROSSMAN: We wanted to make sure we had a
12 competent witness for each.

13 And then it continues -- the exhibit list
14 continues to describe all the correspondence that's attached
15 behind the tab that says category 2. Communications with
16 Mr. Kuntz, category 3. Other documents, for example, the
17 copy of the claims register is category 4. And then
18 publicly filed documents such as motions and court pleadings
19 are behind category 5.

20 So we have attempted, as best we can, to provide
21 -- I think it's quite the feat -- to provide the Court with
22 a full record of all of the submissions and all of the
23 correspondence that are relevant to our motion for sanctions
24 here today.

25 THE COURT: Okay.

1 MR. ROSSMAN: Now, if I may, Your Honor, I want to
2 take a couple minutes to make a few points.

3 So the first thing I'd like to do is to inform the
4 Court of the legal bases for the relief that we're seeking
5 and I want to be very precise about that.

6 THE COURT: Okay.

7 MR. ROSSMAN: Okay? Mr. Kuntz is a pro se
8 litigant to my knowledge, he is not a lawyer admitted to
9 practice, so the rules are specifically tailored to --

10 THE COURT: Sure.

11 MR. ROSSMAN: -- you know, the rules that we're
12 invoking are specifically tailored to that. Okay? We do
13 not make our motion for sanctions pursuant Rule 11. As Your
14 Honor may be away there is a notice period associated with
15 Rule 11, and the notice period in our view would have
16 enabled Mr. Kuntz to frustrate any effective relief on the
17 part of the proponents of the settlement. But Rule 11 is
18 not the exclusive basis for sanctions or for the relief that
19 we're seeking here.

20 We also examined 28 U.S.C. 1927, which is the
21 statute that provides courts with authority over vexatious
22 litigants.

23 So Your Honor understands, there's actually split
24 of circuits on the authority to sanction someone under 1927
25 who is a pro se litigant as opposed to an admitted attorney.

1 The Second Circuit is of the view that you cannot rely on
2 1927 as a basis to sanction a pro se litigant. So we are
3 not relying on Section 1927.

4 We are relying on two things. We are relying on
5 the inherent power of the court, and I will cite cases that
6 describe the Court's authority in this circumstance, and
7 we're relying on 11 U.S.C. 105, which is the -- essentially
8 the equivalent of the all Ritz Act (ph) as it applies to
9 bankruptcy cases and bankruptcy courts.

10 The United States Supreme --

11 THE COURT: Well in fact taking you up on that
12 thread, yes, Rule 11 does have the so-called safe harbor
13 provision and the time periods involved don't make that a
14 good fit for the relief that you're seeking, but in spirit I
15 would say if not in letter it's been complied with because
16 you've offered Mr. Kuntz the opportunity to withdraw the
17 pleading with which -- to which you object and with which
18 you have a problem. Be that as it may, it doesn't strictly
19 comply.

20 But since -- and I'm seeing this in the order that
21 you have handed up at the outset, you're actually not asking
22 today, it would appear, for the imposition of monetary
23 sanctions.

24 MR. ROSSMAN: That's right, Your Honor.

25 THE COURT: So that the only relief that you

1 appear to be proceeding with is injunctive relief.

2 MR. ROSSMAN: That's right.

3 THE COURT: And I certainly have the ability and
4 the power to enter an injunction on a proper showing,
5 reserving to another day findings or further proceedings
6 with respect to fee -- and reimbursement of fees and
7 expenses.

8 I would also note that given pending sea of the
9 appeal before Judge Sullivan once that comes to a conclusion
10 that would, if you will, enable you to put a dollar amount
11 next to the amount of compensatory sanctions, and that it
12 would appear would be something that Judge Sullivan would
13 have jurisdiction to do.

14 I believe I would have jurisdiction to impose
15 monetary sanctions as well, but it doesn't appear we're
16 doing that today.

17 MR. ROSSMAN: That's exactly correct, Your Honor.

18 THE COURT: Okay.

19 MR. ROSSMAN: And I agree with everything Your
20 Honor said.

21 So just so that you have the benefit of the
22 authorities available to you on the record the United States
23 Supreme Court in the Chambers v. Nasco case recognized that
24 a District Court, or in this case a bankruptcy court having
25 power, you know, equal in the circumstance, has authority to

1 sanction parties appearing before it for acting in bad
2 faith, vexatiously, wantonly, or for oppressive reasons.

3 And we rely on no fewer than three Second Circuit
4 of Appeals cases. The Safer (ph) case, the Sassower (ph)
5 case, and the Martin case, all of which have made it clear
6 that the court has the inherent authority and that
7 bankruptcy courts have the authority under section of the
8 Martin-Tragona case, and the bankruptcy courts have the
9 inherent authority plus the authority of Section 105 to
10 order sanctions where there are abuses of process or
11 vexatious conduct before the court.

12 And, you know, we cite particularly two examples.
13 There are more examples than this, Your Honor, but we cite
14 two cases where bankruptcy courts provided precisely the
15 relieve that we're seeking here.

16 So in the D -- I'm sorry, Your Honor -- in the
17 Deep v. Danaher case, is a Northern District of New York, a
18 filing injunction was issued in that case in reliance on
19 Section 105, and that's at 393 Bankruptcy Reporter 51. And,
20 you know, the court citing 105 indicated that a bankruptcy
21 court may issue any order, process, or judgment that is
22 necessary or appropriate to carry out the provisions of this
23 title, including taking any action or making any
24 determination necessary or appropriate to enforce or
25 implement court orders or rules or to prevent an abuse of

1 process.

2 We think that clearly applies here and that it's
3 in accordance with the Bankruptcy Code to the Court to issue
4 an injunction that enables the bankruptcy court's orders to
5 be meaningful rather than just -- and I'm quoting from the
6 Deep case -- "rather than continually thwarted by frivolous
7 filings aimed at preventing the implementation of the
8 bankruptcy court's orders and harassing litigants."

9 In the -- another case that we rely on, Your
10 Honor, is the Truong case here in the Southern District, and
11 there in that case there was an anti-filing injunction first
12 entered by Judge Peck and then a subsequent broader one that
13 was entered by Judge Glenn. And in that case Judge Glenn
14 entered an order that prohibited nationwide any filings for
15 bankruptcy or suggestions of bankruptcy. The issue there
16 was multiple fraudulent petitions for Chapter 13 relief.
17 Anywhere in the courts, state our federal, for a five-year
18 period.

19 What we are seeking here is far more carefully
20 tailored and limited relief with respect to Mr. Kuntz, which
21 is that just merely in the Lehman case that he be prohibited
22 from making filings, and as I indicated to the Court, we
23 have the two safety valves that are there, which one is he
24 can appeal that order if he thinks that order is
25 improvidently issued, otherwise he can come and seek leave

1 of the Court. So if he has a bona fide basis for making a
2 filing that no one can foresee at the moment, then he'll
3 have an opportunity to make his case, but he cannot merely
4 by putting something new on the docket vex and harass and
5 injure the litigants who are otherwise seeking to get the
6 benefit of the Court's orders.

7 Your Honor, the last thing that I want to just
8 take a moment --

9 THE COURT: Let me ask you one clarifying
10 question.

11 MR. ROSSMAN: Yes.

12 THE COURT: Again, looking at the order that you
13 tendered, the order has a finding that Mr. Kuntz lacks
14 standing, but if I'm interpreting what you're saying
15 correctly, that even if he did have standing the objection
16 -- the so-called objection that was filed with respect to
17 the J.P. Morgan settlement in fact was not an objection to
18 the settlement inasmuch as it fairly read was on another
19 topic, which is the appointment of a successor examiner.

20 MR. ROSSMAN: Correct.

21 THE COURT: So even without regard to the issue of
22 standing I think you're asking me for this relief because
23 the appeal from the order approving the settlement is
24 frivolous.

25 MR. ROSSMAN: Yes. That's absolutely correct,

1 Your Honor.

2 THE COURT: And as another alternative, based on
3 the voluminous binder that you've handed up to me, apart and
4 independently of all that, there is the history of filings
5 in this case that forms a predicate separate and apart from
6 the standing issue for the relief that you're requesting.

7 MR. ROSSMAN: That's --

8 THE COURT: Do you agree with that?

9 MR. ROSSMAN: I do, Your Honor. I was going to
10 give you some detail about that.

11 THE COURT: Okay. Go ahead.

12 MR. ROSSMAN: So we have cataloged our research of
13 the docket shows that Mr. Kuntz has made 100 -- I'm sorry --
14 there are 125 filings on the docket in the Lehman Brothers
15 cases that relate to Mr. Kuntz. So I believe that is
16 filings that he made or responses that were made to his
17 filings. Okay? By our count he's filed 8 notices of
18 appeal, 21 objections, 9 other motions.

19 Now, we have cited to two written decisions of
20 Judge Peck previously. I understand that Mr. Kuntz has
21 filed I think it's nine proofs of claim or amended proofs of
22 claim in total, and they're all identified in Judge Peck's
23 orders that we cite in our moving papers, Your Honor. And
24 not only did Judge Peck write an opinion determining that
25 his claims are meritless and disallowing his claims in full,

1 but that his positions were vexatious, that the decision
2 disallowing his claims in full. First there was a notice of
3 appeal and then the notice of appeal was withdrawn, so that
4 decision became final. And some six months or more after
5 the fact Mr. Kuntz moved for reconsideration of the subject
6 of his second opinion by Judge Peck, and Judge Peck again --
7 I think this is in 2010 -- found that Mr. Kuntz was
8 vexatious at that point in time with respect to the proofs
9 of claim and the litigation surrounding those proofs of
10 claim that he had made where he is raising what we
11 understand to be substantially the same issues that he
12 claims are the one that is are giving him standing.

13 So in particular one of the arguments that was
14 raised before Judge Peck in his prior opinions was the
15 argument that had -- that Mr. Kuntz had some interest in the
16 Grand Union bankruptcy and that the Grand Union bankruptcy
17 somehow has some connection to Lehman Brothers, and Judge
18 Peck specifically found that he could discern no connection
19 between Grand Union and Lehman Brothers based on Mr. Kuntz's
20 submissions to the court.

21 And we also -- we don't know quite what he's
22 referring to in terms of the office of unclaimed funds with
23 the New York state controller's office -- but we believe
24 that the root of that, based on what Mr. Kuntz has
25 suggested, is also tied for Grand Union. So it's all of the

1 same piece.

2 If I'm wrong about that I don't think that changes
3 the equation one bit, Your Honor, because the documents that
4 we have seen, there's apparently a letter that he's
5 exchanged with the unclaimed funds office that dates back to
6 October of 2008.

7 So as Your Honor has already observed, anything
8 that's there would already be the subject of bar orders in a
9 confirmed plan and could do him no good, but certainly he's
10 had ample time since 2008 to try to get whatever there is in
11 the unclaims office to the surface if he believes that gives
12 him a connection to this case, and that was something that
13 was available to him at the time he filed his already
14 expunged proofs of claim.

15 So, you know, we're in a posture, Your Honor,
16 where this is ground that's already been well trodden upon,
17 it's been the subject of substantial judicial activity
18 already, and Mr. Kuntz having, you know, had it already
19 determined against him that he has no claim, no standing, no
20 basis to be involved in the case at all, you know, to stand
21 on top of that and to ask for the right to be heard with
22 respect to the settlement, you know, we think is the
23 definition of frivolous and vexatious conduct.

24 And, Your Honor, the -- you know, we're quite
25 sympathetic to creditors as you know in our capacity, you

1 know, representing the official creditors' committee, and
2 we're certainly sympathetic to pro se litigants, and we
3 would lend a sympathetic ear if we thought that there was
4 anything legitimate to what the concerns are that are being
5 expressed here.

6 What particularly is disturbing to us, Your Honor,
7 is that in Mr. Kuntz's submissions and his correspondence we
8 do not see a confused litigant. We do not see someone who
9 is of the view that he has a legitimate claim. He admits
10 very clearly that he has no standing. He admits that his
11 claims have been expunged. He admits in his own
12 characterization, he says he has not filed an objection to
13 the settlement. He is instead seeking a successor examiner
14 and he's putting forth his theory about the claims in the
15 unclaimed funds -- I'm sorry -- whatever exist ins the
16 unclaimed funds office.

17 But the tenor of his statements have made it quite
18 clear to us, Your Honor, that you know, he's not litigating
19 in good faith and that he's viewing this as a game, and that
20 is not something that we think is remotely appropriate.

21 So, you know, we've -- I can take Your Honor
22 through it, but you know, among the things that Mr. Kuntz
23 has said in his various filings is it would be far too easy
24 to just sit back and file an appeal after Monday, assuming
25 the order is signed, and confound the so-called settlement.

1 And you know, he's repeatedly made it difficult to have him
2 served. So he says to us, as I understand your practice
3 unless I provide an email address on a pleading electronic
4 service is a courtesy but it's sufficient to find me. And
5 then he continues, I was planning to leave for the Bahamas
6 for about a month, and he actually faxes us what appears to
7 be an itinerary from a travel website of a potential flight
8 to the Bahamas. He sends articles about people being bitten
9 by a shark, about a ship wreck, you know, claim --

10 MR. KUNTZ: Your Honor --

11 MR. ROSSMAN: -- and it goes on and on and on, and
12 he criticizes the lawyers, he takes, you know, very personal
13 attacks.

14 THE COURT: What is it, Mr. Kuntz?

15 MR. KUNTZ: Your Honor hasn't addressed anything
16 about the sum and substance of email in the order. The fact
17 that I mind send --

18 THE COURT: Mr. Kuntz, I run my courtroom. When
19 Mr. Rossman is done you'll have an opportunity to speak.

20 MR. KUNTZ: Thank you, Your Honor.

21 THE COURT: Go ahead, Mr. Rossman.

22 MR. ROSSMAN: Thank you, Your Honor.

23 You know, he blames the lawyers. Said, you're
24 creating this mud pile so why are you crying about it? If
25 you really wish to look like total fools just keep it up, I

1 should start a list. You know, he refers -- you know,
2 referring again to the Grand Union proceedings. He refers
3 -- he's sending us an article about lawyer ethics in
4 bankruptcy. He mentions a long-standing animus between him
5 and Weil, Gotshal referencing Weil's role in the Grand Union
6 case, which I'm not sure I understand the connection. He
7 threatens that we're going to become a laughing stock of the
8 entire legal community.

9 He suggests that there should be a new team that
10 takes over. I think at one point he referred to the young
11 tigers and old farts, pardon the expression, and I think I
12 was probably in the latter category in his description.

13 He mentions that, you know, there's no actual
14 overnight service from the west coast to Nantucket when he's
15 insisting that we serve him in Nantucket and suggesting that
16 our service for lawyers in my firm who are working in
17 California coming from California to Nantucket would not be
18 proper service or would not get there on time.

19 You know, one of the recent ones, court again? I
20 guess I will miss my chainsaw sharpening class up here back
21 in the ice and snow of northern New York. If Your Honor
22 wishes to hold me in contempt, you know, go ahead, is what
23 he said at the hearing when we were last in court.

24 So, you know, we are distressed that he's not
25 making a what we view to be a legitimate effort to advance

1 actual interests in the settlement, but he seems to be
2 playing a bit of a game with the Court.

3 And I'll say, Your Honor, then I'll sit down,
4 Second Circuit in the Safer case has identified five factors
5 that the Court can consider in issuing sanctions or in
6 entering an order like the one that we ask for today.

7 One factor is the litigant's history of litigation
8 and in particular whether it entailed vexatious, harassing
9 or duplicative lawsuits. And I think Mr. Kuntz has a well
10 documented history of vexatious litigation going back to an
11 opinion at least from 1992 from then District Court Judge
12 Sonia Sotomayor who found his conduct to be vexatious and
13 commented on his breadth of litigation experience. But we
14 have the filing -- we need only look at filings in the
15 Lehman Brothers case to reach that conclusion.

16 The litigant's -- the second factor is the
17 litigant's motive in pursuing the litigation. Does the
18 litigant have an objective, good faith expectation of
19 prevailing? We submit that he does not. He's admitted he
20 doesn't have an objection to the merits of the settlement,
21 and you know, clearly he's -- you know, I don't pretend to
22 know what his motives are, but I don't see a good faith
23 motive or a good faith expectation of prevailing.

24 You know, one of the factors is whether the
25 litigant is represented by counsel. Clearly he's not, he's

1 pro se, but I think his experience in the courts is well
2 documented and I don't think that's in his favor.

3 Fourth is whether the litigant has caused needless
4 expense of the parties who are opposed and unnecessary
5 burden on the courts and their personnel. I think it's
6 palpable what the burden has been, you know, since 2010
7 alone in terms of what he's filed in the Lehman Brothers
8 case and then this motion -- recent motion practice related
9 to the settlement alone, and you know, frankly we think that
10 this is particularly strong circumstances for the issuance
11 of the sanctions given the amount that's at stake here.
12 There are real people that stand to gain the benefit of
13 \$1.5 billion once those funds are released. We have --

14 THE COURT: Well that's the most -- that's one of
15 the most important points to me, because it's now been over
16 two years that I've been presiding over these cases after
17 Judge Peck retired and one of the many things that I've done
18 is deal with the claims not only of large financial
19 institutions but also of individuals who worked at Lehman
20 Brothers or otherwise had small deposits and other claims
21 against Lehman Brothers. And I can tell you that many of
22 them in fact proceeded pro se and many of them dialed in.
23 Sometimes they appeared in the courtroom, sometimes they
24 spoke on their own behalf. And unfortunately many of them
25 had substantial claims or claims that could not be allowed

1 or claims that were not ultimately entitled to a
2 distribution because the claims were in the form of equity
3 or options or the like. And on numerous occasions pro se
4 litigants have thanked me for the time that the Court took
5 to explain the proceedings.

6 And in one case, I actually have it in a special
7 place in my office, I received a letter from a man who
8 appeared telephonically and who had lost his wife to cancer,
9 made his plea for a distribution, listened to my explanation
10 of why I couldn't treat him any differently from others
11 similarly situated, and he sent me a letter thanking me for
12 my time and feeling that even though he didn't receive the
13 monetary distribution he received respect and due process.

14 So -- and of course outside the Lehman Brothers
15 case I have very substantial contact with pro se litigants
16 and have frequently been instrumental in suggesting counsel
17 for them resulting in frankly wonderful results. Financial
18 settlements, women with disabled children getting to stay in
19 their rent-stabilized apartments instead of evicted and the
20 like.

21 So I am not without sympathy to pro se litigants,
22 I have a fair amount of experience with them. I think that
23 I agree with your observation that Mr. Kuntz does not neatly
24 fall into that category by virtue of his history with this
25 case, his attitude towards the Court, as well as his utter

1 lack of a meritorious claim or any claim that relates to the
2 Lehman cases.

3 Anything else, Mr. Rossman?

4 MR. ROSSMAN: No. The last thing that I'll
5 mention, Your Honor, is, you know, the final factor is
6 whether sanctions would be adequate to protect the courts
7 and other parties. I think we've covered that largely.

8 But I will say, Your Honor, that we made a real
9 effort to try to tailor the remedy to the harm here, and
10 while we think sanctions would be appropriate we don't know
11 that sanctions would necessarily change the behavior of
12 Mr. Kuntz. We do think what's necessary and what is
13 appropriate is the filing injunction to prevent Mr. Kuntz
14 from doing in other circumstances what he's done here.

15 And I'll say, Your Honor, I -- you know, in my
16 experience before the Court in this case and in other cases
17 you've extended every opportunity for due process to every
18 litigant that's been here before. I think this particular
19 litigant has exhausted any rational amount of patience that
20 a court would extent to this litigant, but even so the order
21 protects his rights fully. And if he does have a valid
22 basis for proceeding against Lehman Brothers in the future,
23 although one does not exist today, that order would not take
24 away his rights, that order would channel his rights while
25 protecting other litigants.

1 Thank you, Your Honor.

2 THE COURT: Okay. Thank you, Mr. Rossman.

3 Mr. Kuntz?

4 MR. KUNTZ: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 MR. KUNTZ: I assume this is the microphone.

7 THE COURT: It is.

8 MR. KUNTZ: There was mention of nine claims
9 filed. There was three claims that were amended twice due
10 to an error in calculation of the interest.

11 Is Your Honor is aware that this has become sort
12 of a Chinese fire drill? What was a simple what I thought a
13 constructive suggestion because I have a long-standing
14 animus with the way the Lehman case has been administered, I
15 was in essence thrown out by Judge Peck's decision.

16 My problem is that there's a letter from Judge
17 Martini, U.S. District Court judge, which I believe counsel
18 is aware of, that addresses the role of Weil, Gotshal both
19 as the attorneys for financing certain security agreements
20 in Grand Union and as co-counsel for Grand Union in New
21 Jersey before Judge Winfield.

22 Now that's Judge Winfield's decision. I was here
23 before Judge Winfield, I've been acquainted with her before
24 she took the bench. And for Judge Peck to allow Weil,
25 Gotshal to prosecute the claims objections without anybody

1 saying well what about this letter from Judge Martini
2 describing them as co-counsel to Grand Union when this
3 problem that led me to come to Lehman Brothers, which is the
4 pursuit of a \$3 million escrow account how -- Judge Peck was
5 always fair and understanding, firm. I made my objections.
6 For instance I said, why should the estate of Lehman
7 Brothers be buying an apartment building in Marche, France,
8 which has the second highest Muslim population of any city
9 in France and then give some sort of mutual fund in India
10 which has the highest economy in the world rate? Why would
11 they buy a property that's at risk both politically and
12 physically and then take something that's attractive in
13 India and throw it out? Well those comments went here, they
14 went wherever.

15 But they rushed off to Judge Sullivan, they've
16 never paid the filling fee in this court -- the appeal fee.
17 I went to pay it this morning and I was declined because I
18 only had \$50 bill.

19 So my solution is they're avenue to Judge Sullivan
20 is not to hijack my appeal, they're avenue was to file a
21 cross-appeal. You know, they're oh, we have this huge sum
22 of money that's at risk in (indiscernible). They couldn't
23 afford a \$296 filing fee in this court. And as far as I
24 understand things, until that filing fee is paid they really
25 shouldn't be over in District Court. They are in District

1 Court as you've seen, I've responded to the District Court's
2 papers, I'm here once we ironed out the papers things. I've
3 put everything else in my life pretty much aside. I planned
4 to go to the Bahamas three or four times, that's out the
5 window. I have papers that are due in Supreme Court in
6 Essex County returnable Monday, I haven't even been able to
7 converse with the lawyers to ask for an extension of time.

8 You know, I mean so I'm basically playing this
9 very seriously as best I know how and it's not -- my
10 suggestion was constructive because in the big world this
11 settlement agreement between the bank and Lehman who -- it
12 was the bank's action that precipitated the, as I understand
13 it, the collapse of Lehman. If they'd been allowed to last
14 three more days the federal reserve bank might have backed
15 up like they did with AIG and bail them out. Well that
16 happened.

17 So now the single most event that brought on the
18 economic collapse that can be identified was the
19 relationship between the bank and Lehman and out of what I
20 consider to be having been humanly involved in this case
21 almost as Judge Peck said every omnibus hearing I was there,
22 is that this needs to be squeaky clean.

23 And if Your Honor says I don't have the authority
24 to do it, it's a bad idea, and I never intended to appeal.
25 I simply asked for an extension of time, they filed papers,

1 and in those papers they said I was sanctioned by Judge
2 McKelvie in Delaware in Grand Union. That never happened.
3 Now, Judge McKelvie wanted to sanction me, very much wanted
4 to sanction me, but when the professionals left with their
5 \$750,000 in fees that stopped. They have not produced a
6 copy of that docket. And Judge McKelvie, unfortunately,
7 gave more concern over the \$750,000 in professional fees
8 than the \$700 million that the investors lost in Grand
9 Union.

10 Now, I'm like only one of three survivors of who
11 held those notes, 99.7 percent of those noteholders have
12 been wiped out. And if 100 percent of the noteholders get
13 wiped out it's a prima facie case (indiscernible).

14 So my pursuit of the escrow account that Lehman
15 brought across the river from New Jersey here was basically
16 under a theory of constructive trust, nobody would give me
17 any documents, and as Your Honor spoke the other day about
18 people issuing their own subpoenas, I understand there's a
19 very fine line about what gets me in trouble and what not
20 gets me in trouble. I was cautioned by the Tenth Circuit
21 court of Appeals in (indiscernible). I'm not issuing
22 subpoenas.

23 And if Your Honor has read Judge Peck's decision
24 there were two key witnesses. Both very distinguished. One
25 is extremely wealthy. I was going to invite them to come

1 and testify. I'm not, you know, just trying to serve
2 subpoenas and stuff, there are limits.

3 Now, if Your Honor has -- I don't know if counsel
4 has reviewed this letter from Judge Martini, but to pursue
5 and rely upon Judge Peck's decision based on what really
6 happened with Weil, Gotshal is questionable. As I stated to
7 them, I said I think standing is a loser whether I have it.

8 Whether I have -- if there is something in Albany,
9 whether it's class X Chinese yen, triple X, I don't know
10 preferred, whatever, and I get no financial distribution
11 under the plan I still believe that allows me to make a
12 constructive comment or I shouldn't be here at all. It
13 should be the state comptroller's office representing all
14 the people who they're holding -- apparently they're holding
15 quite a bit of Lehman stuff, and as Your Honor may have seen
16 in the other thing they're holding 50 or 60 or 70 accounts
17 of monies that Lehman instead of being here saying geeze
18 isn't that guy awful because we created this mess, we --
19 they should be up there saying well what happened to -- I
20 mean prior to Your Honor being -- assuming this case Judge
21 Peck supervised the recovery of almost 12- to \$15 million
22 from the state comptroller's office. There is more money
23 there. To my knowledge the state comptroller's office filed
24 huge claims, got a settlement, they've never been heard from
25 again. They originally wanted a trustee appointed in this

1 case. That was I guess declined. And as I stated before, I
2 always thought this was money. So in which case I would
3 agree with you I should be sanctioned, have no standing, and
4 I never would have said anything.

5 But recently the state comptroller's office sent
6 me some letters saying you want your Lehman stuff, fine,
7 here sign a release. Well, if you have to sign a release
8 that doesn't mean you're sending -- they're sending you a
9 check. They have something there that is a little bit more
10 (indiscernible) like that, and I requested some information,
11 I have no response from them. I went on their internet
12 page, my claim has been purged.

13 So I pretty much said well, here's any
14 constructive comment I think for the world, not this Court,
15 for the world to see the court seeking -- and it may be a
16 small delay, I can't imagine it being more than a month or
17 two, most of the work has already been done, you know. And
18 as I said, I was prepared to offer a stipulation. Take the
19 money, put it in the court's registry account then Your
20 Honor would control it. Then they can have maybe a 10 or 15
21 minute hearing. I don't know if the Court even has the
22 power to appoint successor examiner.

23 But in the big world that I see, especially with
24 the tumultuous political climate outside it behooves I
25 believe the bank and everybody else to say, you know, we not

1 only did the normal thing and offered a settlement, we
2 really did the -- we went the extra mile and brought in, and
3 I suggested former Governor Pataki, you know? I don't know.
4 I don't know if this can be done, but I just know that if
5 this is just simply shoved through as a simple approved
6 settlement --

7 THE COURT: Mr. Kuntz --

8 MR. KUNTZ: Yeah.

9 THE COURT: -- I have to stop you there.

10 Nothing was shoved through. This was a settlement
11 that was negotiated over a very long period of time. There
12 was significant contention in the case that I witnessed and
13 was party to.

14 A settlement has to be approved under Rule 9019.
15 There are standards. This is case law that's set down by
16 the Second Circuit that I had to follow. The debtors were
17 required to make a showing as to why the settlement passed
18 those tests. The entire creditor body of Lehman had notice,
19 the world, as you say, had notice, because the financial
20 press continues to report on the Lehman case.

21 MR. KUNTZ: That's correct, Your Honor.

22 THE COURT: No one objected. Parties who have
23 stakes in this case that are worth tens of millions of
24 dollars did not object, did not question the business
25 judgment of Lehman in settling the case, nor did I.

1 I entered an order, I didn't shove anything
2 through, I had a hearing and I entered an order.

3 There's no role for a successor examiner, there's
4 no jurisdiction to appoint a successor examiner, there will
5 be no successor examiner.

6 This is an estate that is being liquidated in an
7 orderly fashion, it is achieving substantial good results
8 that's resulting in money into the hands of creditors that
9 frankly far exceeds anyone's expectations back in the dark
10 days of 2008.

11 There is no place here now for speculating as to
12 what the federal government might or might not have done. I
13 didn't control it then and I have no control over it now.
14 The only thing I do have control over is to try to move the
15 cases along to get the trust in a position to make
16 distributions to creditors, and you are standing in the way
17 of that.

18 The Lehman docket alone would constitute a full-
19 time job for me. Alone. In addition to the Lehman docket I
20 have billions of dollars of other cases. In addition to
21 those cases I have hundreds of cases involving individuals
22 who are threatened with losing their homes and have had all
23 other kinds of terrible things happen to them in their
24 lives.

25 One of the reasons that courts cannot countenance

1 vexatious and frivolous litigation is because it takes our
2 time and distracts us from the important work of
3 administering justice.

4 So this isn't a game, I don't know you, you don't
5 know me, it's not about personal animus, it's not about
6 personnel animus by any of the gentlemen sitting here or at
7 Weil, Gotshal for that matter. They're doing their job,
8 their attention of the professionals in these cases was
9 pursuant to court order with the oversight of the United
10 States Trustee, which is a department -- a part of the
11 Department of Justice. It's all done in an open forum, it's
12 all done in a public way, and we have to keep that process
13 moving forward.

14 And you'll notice that Mr. Rossman gave me a very
15 surgically crafted narrow order that he's going to ask me to
16 sign, and I too was very respectful of the jurisdiction of
17 the District Court, because that's my job to apply the law,
18 play by the rules, and treat everyone fairly.

19 So if you have anything to say in opposition to
20 the relief that Lehman has requested I'd like to hear it,
21 otherwise I'm going to proceed to make a determination on
22 the motion.

23 MR. KUNTZ: Well, I have several things, Your
24 Honor. They mentioned a number of docket items I had. One
25 hundred, 125.

1 THE COURT: Yes.

2 MR. KUNTZ: In this case alone there's over 1,000
3 pages -- 25,000 docket entries on just people treating
4 claims. Now, I'm sorry, I've set in Your Honor's court
5 several days, I've heard some of the cases of lesser
6 financial significance, I've set in the other, I cannot
7 bring myself to be sympathetic to the financial needs of
8 Deutsche Bank for half a billion dollar claim when I'm
9 personally aware as reflected in the docket that 53,000
10 Chinese nationals in Hong Kong were stiffed, that the Court
11 gave preferential treatment to lawyers from Rome who sent
12 claims registered mail in the (indiscernible) post office
13 which took a month to get here, and Chinese nationals who
14 used a (indiscernible) to -- in the Hong Kong post office.
15 Now the Europeans were claim (indiscernible). The Chinese,
16 we don't even want to understand what the --

17 THE COURT: Are you suggesting that I exhibited
18 biased for Chinese --

19 MR. KUNTZ: Not Your Honor --

20 THE COURT: -- nationals?

21 MR. KUNTZ: -- I said before. Before Your Honor
22 came to this case. I'm just talking about the claims
23 procedure. And then of course -- any way --

24 THE COURT: Mr. Kuntz, what does this have to do
25 with the matter before the Court now?

1 MR. KUNTZ: My view of how this case has been
2 administered. And any way, I have two more things to say.

3 All this email stuff. I disapprove of the use of
4 email in court papers. They're not signed, and as far as
5 I'm concerned anything that's sent in email is in the nature
6 of a settlement that most of the ones that they are talking
7 about like the shark and the boat was sent to the newest guy
8 on their team in Los Angeles.

9 My comment about overnight mail I learned that in
10 General Motors where the documents were prepared here in New
11 York and printed in Seattle so they could get them three
12 hours time advantage and overnight.

13 And my last question to counsel, is there anybody
14 at this table who has read Judge Martini's letter?

15 MR. ROSSMAN: I've read it, sir.

16 MR. KUNTZ: Thank you. That's all I need to say,
17 Your Honor.

18 THE COURT: Thank you, Mr. Kuntz.

19 All right. Based on the pleadings that are before
20 me in connection with the sanctions motion and based on the
21 entirety of the record, including the submission, Mr.
22 Rossman of your declaration and the attached exhibits, and
23 also incorporating into the record Sanction's Exhibit 1,
24 which was the form of stipulation, which you offered to
25 Mr. Kuntz for his signature in which he declined, I'm going

1 to grant the motion for sanctions against Mr. Kuntz and will
2 entered the order that you tendered this afternoon.

3 Is there anything else?

4 MR. ROSSMAN: No. Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. KUNTZ: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Kuntz. Thank you

8 Kendra.

9 (Proceedings concluded at 4:03 PM)

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RULINGS

PAGE

Doc #52107 Motion for Sanctions Against William
Kuntz III

48

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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DN: cn=Dawn South, o, ou,
email=digital1@veritext.com,
c=US
Date: 2016.03.07 16:40:09 -05'00'

Dawn South

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Date: March 7, 2016

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501